IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

SUMMARY SUIT NO.3115 OF 2004

Kantilal Otarmal Plaintiff

versus

M/s.Pankaj Builders and another Defendants

Mr.N.H.Nikumbh i/by Tushar Goradia & Co. for plaintiff.

None for defendants.

CORAM : S.C.DHARMADHIKARI, J.

DATE : 18th July 2005

PC :

1. Mr.Nikumbh appearing for plaintiff tenders an affidavit proving service of writ of summons. Same is taken on record and marked "X" for identification. He tenders original documents along with list. Same is taken on record and marked "X-1" for identification.

2. Claim in the suit is arising out of a Bill of Exchange which is at Exhibit-A, dated 14th October 2001. The same is drawn by first defendant on the second defendant who has accepted it. The address of the second defendant

as well as first defendant is set out in the Bill of Exchange. The Bill of Exchange was presented on 13th November 2001 to second defendant but it was dishonoured. The dishonour was notified to the first defendant by the plaintiff and even the first defendant has failed to comply with the demand and/or requisition of the plaintiff. The suit is, therefore, on a negotiable instrument and the plaintiff claims interest thereon at the statutory rate.

3. The writ of summons was served after the suit was instituted on 11th October 2004. Initially first defendant partner accepted the said notice and stated that he is not associated with the firm nor is in control of the affairs. Notice under Order XXX, Rule 5 of CPC was issued but no appearance is filed by the firm even under protest. Thus, first defendant drawer has not disputed the claim of plaintiff. Suit is maintainable as a summary suit. Claim is within limitation. The same is not even disputed by the second defendant. He has duly received the notice of demand and also the duplicate writ of summons. An affidavit filed proving service shows that the duplicate copy has been served on the second defendant who accepted the same and

acknowledged receipt thereof. I have verified address from the cause of title as well as from the affidavit of the bailiff. Thus, even second defendant has not disputed the claim.

4. In the circumstances, there will be a decree as prayed. Refund of court fees as well as computation of advocates costs as per rules.

(S.C.DHARMADHIKARI, J.)